

ASSEMBLY BILL

No. 830

Introduced by Assembly Member Sharon Runner

February 18, 2005

An act to amend Sections 17053.70, 17053.74, 23612.2, and 23622.7 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 830, as introduced, Sharon Runner. Personal income and corporation taxes: enterprise zone.

The Personal Income Tax Law and the Corporation Tax Law allow a taxpayer to claim certain tax incentives for activities conducted in an enterprise zone, including an enterprise zone sales and use tax credit and an enterprise zone “qualified wages” credit.

Existing law, in connection with the calculation of either of those tax credits, specifies certain statutory apportionment procedures and the application of property and payroll factors in income apportionment formulas, and limits apportionment calculations to California-based income, rather than worldwide income. Existing law additionally limits the amount of either the “qualified wages” tax credit or the enterprise zone sales and use tax credit, with respect to a particular enterprise zone, to the amount of tax that would be imposed on the taxpayer’s business income attributable to that enterprise zone.

This bill would expand the amounts of those tax credits by providing that the amount of either tax credit may not exceed the amount of tax that would be imposed on the taxpayer’s business income attributable to all specified enterprise zones, or if applicable, the amount of the tax that would be imposed on the business income attributable to specified enterprise zones of all taxpayers that are

members of a unitary group. This bill would also make conforming changes to certain statutory apportionment procedures, and to the application and definition of property and payroll factors in income apportionment formulas.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17053.70 of the Revenue and Taxation
- 2 Code is amended to read:
- 3 17053.70. (a) There ~~shall be~~ *is* allowed as a credit against the
- 4 “net tax” (as defined in Section 17039) for the taxable year an
- 5 amount equal to the sales or use tax paid or incurred during the
- 6 taxable year by the taxpayer in connection with the taxpayer’s
- 7 purchase of qualified property.
- 8 (b) For purposes of this section:
- 9 (1) “Taxpayer” means a person or entity engaged in a trade or
- 10 business within an enterprise zone.
- 11 (2) “Qualified property” means:
- 12 (A) Any of the following:
- 13 (i) Machinery and machinery parts used for fabricating,
- 14 processing, assembling, and manufacturing.
- 15 (ii) Machinery and machinery parts used for the production of
- 16 renewable energy resources.
- 17 (iii) Machinery and machinery parts used for either of the
- 18 following:
- 19 (I) Air pollution control mechanisms.
- 20 (II) Water pollution control mechanisms.
- 21 (iv) Data processing and communications equipment,
- 22 including, but not limited, to computers, computer-automated
- 23 drafting systems, copy machines, telephone systems, and faxes.
- 24 (v) Motion picture manufacturing equipment central to
- 25 production and postproduction, including, but not limited to,
- 26 cameras, audio recorders, and digital image and sound processing
- 27 equipment.
- 28 (B) The total cost of qualified property purchased and placed
- 29 in service in any taxable year that may be taken into account by

any taxpayer for purposes of claiming this credit shall not exceed one million dollars (\$1,000,000).

(C) The qualified property is used by the taxpayer exclusively in an enterprise zone.

(D) The qualified property is purchased and placed in service before the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(3) “Enterprise zone” means the area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(c) If the taxpayer has purchased property upon which a use tax has been paid or incurred, the credit provided by this section ~~shall be~~ *is* allowed only if qualified property of a comparable quality and price is not timely available for purchase in this state.

(d) In the case where the credit otherwise allowed under this section exceeds the “net tax” for the taxable year, that portion of the credit that exceeds the “net tax” may be carried over and added to the credit, if any, in succeeding taxable years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(e) Any taxpayer who elects to be subject to this section ~~shall~~ *may not* be entitled to increase the basis of the qualified property as otherwise required by Section 164 (a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the taxpayer’s purchase of qualified property.

(f) (1) The amount of the credit otherwise allowed under this section and Section 17053.74, including any credit carryover from prior years, that may reduce the “net tax” for the taxable year shall not exceed the amount of tax that would be imposed on the taxpayer’s business income attributable to ~~the enterprise zone~~ *all of those enterprise zones that, in accordance with Section 7076.1 of the Government Code, have received an audit determination of either “pass” or “superior,”* determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) Attributable income shall be that portion of the taxpayer’s California source business income that is apportioned to ~~the enterprise zone~~ *all of those enterprise zones that, in accordance with Section 7076.1 of the Government Code, have received an audit determination of either “pass” or “superior.”* For that

1 purpose, the taxpayer's business income attributable to sources in
2 this state first shall be determined in accordance with Chapter 17
3 (commencing with Section 25101) of Part 11. That business
4 income shall be further apportioned to ~~the those~~ enterprise-zone
5 *zones that, in accordance with Section 7076.1 of the Government*
6 *Code, have received an audit determination of either "pass" or*
7 *"superior,"* in accordance with Article 2 (commencing with
8 Section 25120) of Chapter 17 of Part 11, modified for purposes
9 of this section in accordance with paragraph (3).

10 (3) Business income shall be apportioned to ~~the those~~
11 *enterprise-zone zones that, in accordance with Section 7076.1 of*
12 *the Government Code, have received an audit determination of*
13 *either "pass" or "superior,"* by multiplying the total California
14 business income of the taxpayer by a fraction, the numerator of
15 which is the property factor plus the payroll factor, and the
16 denominator of which is two. For purposes of this paragraph:

17 (A) The property factor is a fraction, the numerator of which is
18 the average value of the taxpayer's real and tangible personal
19 property owned or rented and used in ~~the those~~ enterprise-zone
20 *zones that, in accordance with Section 7076.1 of the Government*
21 *Code, have received an audit determination of either "pass" or*
22 *"superior,"* during the taxable year, and the denominator of
23 which is the average value of all the taxpayer's real and tangible
24 personal property owned or rented and used in this state during
25 the taxable year.

26 (B) The payroll factor is a fraction, the numerator of which is
27 the total amount paid by the taxpayer in ~~the those~~ enterprise-zone
28 *zones that, in accordance with Section 7076.1 of the Government*
29 *Code, have received an audit determination of either "pass" or*
30 *"superior,"* during the taxable year for compensation, and the
31 denominator of which is the total compensation paid by the
32 taxpayer in this state during the taxable year.

33 (4) The portion of any credit remaining, if any, after
34 application of this subdivision, shall be carried over to
35 succeeding taxable years, as if it were an amount exceeding the
36 "net tax" for the taxable year, as provided in subdivision (d).

37 (g) The amendments made to this section by ~~the act adding~~
38 *this subdivision Chapter 323 of the Statutes of 1998* shall apply
39 to taxable years beginning on or after January 1, 1998.

1 *(h) The amendments made to this section by the act adding*
2 *this subdivision shall apply to taxable years beginning on or*
3 *after January 1, 2005.*

4 SEC. 2. Section 17053.74 of the Revenue and Taxation Code
5 is amended to read:

6 17053.74. (a) There ~~shall be~~ *is* allowed a credit against the
7 “net tax” (as defined in Section 17039) to a taxpayer who
8 employs a qualified employee in an enterprise zone during the
9 taxable year. The credit ~~shall be~~ *is* equal to the sum of each of the
10 following:

11 (1) Fifty percent of qualified wages in the first year of
12 employment.

13 (2) Forty percent of qualified wages in the second year of
14 employment.

15 (3) Thirty percent of qualified wages in the third year of
16 employment.

17 (4) Twenty percent of qualified wages in the fourth year of
18 employment.

19 (5) Ten percent of qualified wages in the fifth year of
20 employment.

21 (b) For purposes of this section:

22 (1) “Qualified wages” means:

23 (A) (i) Except as provided in clause (ii), that portion of wages
24 paid or incurred by the taxpayer during the taxable year to
25 qualified employees that does not exceed 150 percent of the
26 minimum wage.

27 (ii) For up to 1,350 qualified employees who are employed by
28 the taxpayer in the Long Beach Enterprise Zone in aircraft
29 manufacturing activities described in Codes 3721 to 3728,
30 inclusive, and Code 3812 of the Standard Industrial
31 Classification (SIC) Manual published by the United States
32 Office of Management and Budget, 1987 edition, “qualified
33 wages” means that portion of hourly wages that does not exceed
34 202 percent of the minimum wage.

35 (B) Wages received during the 60-month period beginning
36 with the first day the employee commences employment with the
37 taxpayer. Reemployment in connection with any increase,
38 including a regularly occurring seasonal increase, in the trade or
39 business operations of the taxpayer does not constitute
40 commencement of employment for purposes of this section.

(C) Qualified wages do not include any wages paid or incurred by the taxpayer on or after the zone expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the taxpayer within the enterprise zone within the 60-month period prior to the zone expiration date shall continue to qualify for the credit under this section after the zone expiration date, in accordance with all provisions of this section applied as if the enterprise zone designation were still in existence and binding.

(2) “Minimum wage” means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) “Zone expiration date” means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(4) (A) “Qualified employee” means an individual who meets all of the following requirements:

(i) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer’s trade or business located in an enterprise zone.

(ii) Performs at least 50 percent of his or her services for the taxpayer during the taxable year in an enterprise zone.

(iii) Is hired by the taxpayer after the date of original designation of the area in which services were performed as an enterprise zone.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee’s commencement of employment with the taxpayer, was a person eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act, or its successor.

(II) Immediately preceding the qualified employee’s commencement of employment with the taxpayer, was a person eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of

1 Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions
2 Code, or its successor.

3 (III) Immediately preceding the qualified employee's
4 commencement of employment with the taxpayer, was an
5 economically disadvantaged individual 14 years of age or older.

6 (IV) Immediately preceding the qualified employee's
7 commencement of employment with the taxpayer, was a
8 dislocated worker who meets any of the following:

9 (aa) Has been terminated or laid off or who has received a
10 notice of termination or layoff from employment, is eligible for
11 or has exhausted entitlement to unemployment insurance
12 benefits, and is unlikely to return to his or her previous industry
13 or occupation.

14 (bb) Has been terminated or has received a notice of
15 termination of employment as a result of any permanent closure
16 or any substantial layoff at a plant, facility, or enterprise,
17 including an individual who has not received written notification
18 but whose employer has made a public announcement of the
19 closure or layoff.

20 (cc) Is long-term unemployed and has limited opportunities for
21 employment or reemployment in the same or a similar
22 occupation in the area in which the individual resides, including
23 an individual 55 years of age or older who may have substantial
24 barriers to employment by reason of age.

25 (dd) Was self-employed (including farmers and ranchers) and
26 is unemployed as a result of general economic conditions in the
27 community in which he or she resides or because of natural
28 disasters.

29 (ee) Was a civilian employee of the Department of Defense
30 employed at a military installation being closed or realigned
31 under the Defense Base Closure and Realignment Act of 1990.

32 (ff) Was an active member of the armed forces or National
33 Guard as of September 30, 1990, and was either involuntarily
34 separated or separated pursuant to a special benefits program.

35 (gg) Is a seasonal or migrant worker who experiences chronic
36 seasonal unemployment and underemployment in the agriculture
37 industry, aggravated by continual advancements in technology
38 and mechanization.

1 (hh) Has been terminated or laid off, or has received a notice
2 of termination or layoff, as a consequence of compliance with the
3 Clean Air Act.

4 (V) Immediately preceding the qualified employee's
5 commencement of employment with the taxpayer, was a disabled
6 individual who is eligible for or enrolled in, or has completed a
7 state rehabilitation plan or is a service-connected disabled
8 veteran, veteran of the Vietnam era, or veteran who is recently
9 separated from military service.

10 (VI) Immediately preceding the qualified employee's
11 commencement of employment with the taxpayer, was an
12 ex-offender. An individual ~~shall be~~ is treated as convicted if he or
13 she was placed on probation by a state court without a finding of
14 guilt.

15 (VII) Immediately preceding the qualified employee's
16 commencement of employment with the taxpayer, was a person
17 eligible for or a recipient of any of the following:

18 (aa) Federal Supplemental Security Income benefits.

19 (bb) Aid to Families with Dependent Children.

20 (cc) Food stamps.

21 (dd) State and local general assistance.

22 (VIII) Immediately preceding the qualified employee's
23 commencement of employment with the taxpayer, was a member
24 of a federally recognized Indian tribe, band, or other group of
25 Native American descent.

26 (IX) Immediately preceding the qualified employee's
27 commencement of employment with the taxpayer, was a resident
28 of a targeted employment area, as defined in Section 7072 of the
29 Government Code.

30 (X) An employee who qualified the taxpayer for the enterprise
31 zone hiring credit under former Section 17053.8 or the program
32 area hiring credit under former Section 17053.11.

33 (XI) Immediately preceding the qualified employee's
34 commencement of employment with the taxpayer, was a member
35 of a targeted group, as defined in Section 51(d) of the Internal
36 Revenue Code, or its successor.

37 (B) Priority for employment shall be provided to an individual
38 who is enrolled in a qualified program under the federal Job
39 Training Partnership Act or the Greater Avenues for
40 Independence Act of 1985 or who is eligible as a member of a

1 targeted group under the Work Opportunity Tax Credit (Section
2 51 of the Internal Revenue Code), or its successor.

3 (5) "Taxpayer" means a person or entity engaged in a trade or
4 business within an enterprise zone designated pursuant to
5 Chapter 12.8 (commencing with Section 7070) of the
6 Government Code.

7 (6) "Seasonal employment" means employment by a taxpayer
8 that has regular and predictable substantial reductions in trade or
9 business operations.

10 (c) The taxpayer shall do both of the following:

11 (1) Obtain from the Employment Development Department, as
12 permitted by federal law, the local county or city Job Training
13 Partnership Act administrative entity, the local county GAIN
14 office or social services agency, or the local government
15 administering the enterprise zone, a certification which provides
16 that a qualified employee meets the eligibility requirements
17 specified in clause (iv) of subparagraph (A) of paragraph (4) of
18 subdivision (b). The Employment Development Department may
19 provide preliminary screening and referral to a certifying agency.
20 The Employment Development Department shall develop a form
21 for this purpose. The Department of Housing and Community
22 Development shall develop regulations governing the issuance of
23 certificates by local governments pursuant to subdivision (a) of
24 Section 7086 of the Government Code.

25 (2) Retain a copy of the certification and provide it upon
26 request to the Franchise Tax Board.

27 (d) (1) For purposes of this section:

28 (A) All employees of trades or businesses, which are not
29 incorporated, that are under common control shall be treated as
30 employed by a single taxpayer.

31 (B) The credit, if any, allowable by this section with respect to
32 each trade or business shall be determined by reference to its
33 proportionate share of the expense of the qualified wages giving
34 rise to the credit, and shall be allocated in that manner.

35 (C) Principles that apply in the case of controlled groups of
36 corporations, as specified in subdivision (d) of Section 23622.7,
37 shall apply with respect to determining employment.

38 (2) If an employer acquires the major portion of a trade or
39 business of another employer (hereinafter in this paragraph
40 referred to as the "predecessor") or the major portion of a

1 separate unit of a trade or business of a predecessor, then, for
2 purposes of applying this section (other than subdivision (e)) for
3 any calendar year ending after that acquisition, the employment
4 relationship between a qualified employee and an employer shall
5 not be treated as terminated if the employee continues to be
6 employed in that trade or business.

7 (e) (1) (A) If the employment, other than seasonal
8 employment, of any qualified employee, with respect to whom
9 qualified wages are taken into account under subdivision (a) is
10 terminated by the taxpayer at any time during the first 270 days
11 of that employment (whether or not consecutive) or before the
12 close of the 270th calendar day after the day in which that
13 employee completes 90 days of employment with the taxpayer,
14 the tax imposed by this part for the taxable year in which that
15 employment is terminated shall be increased by an amount equal
16 to the credit allowed under subdivision (a) for that taxable year
17 and all prior taxable years attributable to qualified wages paid or
18 incurred with respect to that employee.

19 (B) If the seasonal employment of any qualified employee,
20 with respect to whom qualified wages are taken into account
21 under subdivision (a) is not continued by the taxpayer for a
22 period of 270 days of employment during the 60-month period
23 beginning with the day the qualified employee commences
24 seasonal employment with the taxpayer, the tax imposed by this
25 part, for the taxable year that includes the 60th month following
26 the month in which the qualified employee commences seasonal
27 employment with the taxpayer, shall be increased by an amount
28 equal to the credit allowed under subdivision (a) for that taxable
29 year and all prior taxable years attributable to qualified wages
30 paid or incurred with respect to that qualified employee.

31 (2) (A) Subparagraph (A) of paragraph (1) ~~shall~~ *does* not
32 apply to any of the following:

33 (i) A termination of employment of a qualified employee who
34 voluntarily leaves the employment of the taxpayer.

35 (ii) A termination of employment of a qualified employee
36 who, before the close of the period referred to in paragraph (1),
37 becomes disabled and unable to perform the services of that
38 employment, unless that disability is removed before the close of
39 that period and the taxpayer fails to offer reemployment to that
40 employee.

1 (iii) A termination of employment of a qualified employee, if
2 it is determined that the termination was due to the misconduct
3 (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22
4 of the California Code of Regulations) of that employee.

5 (iv) A termination of employment of a qualified employee due
6 to a substantial reduction in the trade or business operations of
7 the taxpayer.

8 (v) A termination of employment of a qualified employee, if
9 that employee is replaced by other qualified employees so as to
10 create a net increase in both the number of employees and the
11 hours of employment.

12 (B) Subparagraph (B) of paragraph (1) ~~shall~~ *does* not apply to
13 any of the following:

14 (i) A failure to continue the seasonal employment of a
15 qualified employee who voluntarily fails to return to the seasonal
16 employment of the taxpayer.

17 (ii) A failure to continue the seasonal employment of a
18 qualified employee who, before the close of the period referred to
19 in subparagraph (B) of paragraph (1), becomes disabled and
20 unable to perform the services of that seasonal employment,
21 unless that disability is removed before the close of that period
22 and the taxpayer fails to offer seasonal employment to that
23 qualified employee.

24 (iii) A failure to continue the seasonal employment of a
25 qualified employee, if it is determined that the failure to continue
26 the seasonal employment was due to the misconduct (as defined
27 in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the
28 California Code of Regulations) of that qualified employee.

29 (iv) A failure to continue seasonal employment of a qualified
30 employee due to a substantial reduction in the regular seasonal
31 trade or business operations of the taxpayer.

32 (v) A failure to continue the seasonal employment of a
33 qualified employee, if that qualified employee is replaced by
34 other qualified employees so as to create a net increase in both
35 the number of seasonal employees and the hours of seasonal
36 employment.

37 (C) For purposes of paragraph (1), the employment
38 relationship between the taxpayer and a qualified employee shall
39 not be treated as terminated by reason of a mere change in the
40 form of conducting the trade or business of the taxpayer, if the

1 qualified employee continues to be employed in that trade or
2 business and the taxpayer retains a substantial interest in that
3 trade or business.

4 (3) Any increase in tax under paragraph (1) shall not be treated
5 as tax imposed by this part for purposes of determining the
6 amount of any credit allowable under this part.

7 (f) In the case of an estate or trust, both of the following apply:

8 (1) The qualified wages for any taxable year shall be
9 apportioned between the estate or trust and the beneficiaries on
10 the basis of the income of the estate or trust allocable to each.

11 (2) Any beneficiary to whom any qualified wages have been
12 apportioned under paragraph (1) shall be treated, for purposes of
13 this part, as the employer with respect to those wages.

14 (g) For purposes of this section, “enterprise zone” means an
15 area designated as an enterprise zone pursuant to Chapter 12.8
16 (commencing with Section 7070) of Division 7 of Title 1 of the
17 Government Code.

18 (h) The credit allowable under this section shall be reduced by
19 the credit allowed under Sections 17053.10, 17053.17 and
20 17053.46 claimed for the same employee. The credit shall also be
21 reduced by the federal credit allowed under Section 51 of the
22 Internal Revenue Code.

23 In addition, any deduction otherwise allowed under this part
24 for the wages or salaries paid or incurred by the taxpayer upon
25 which the credit is based shall be reduced by the amount of the
26 credit, prior to any reduction required by subdivision (i) or (j).

27 (i) In the case where the credit otherwise allowed under this
28 section exceeds the “net tax” for the taxable year, that portion of
29 the credit that exceeds the “net tax” may be carried over and
30 added to the credit, if any, in succeeding taxable years, until the
31 credit is exhausted. The credit shall be applied first to the earliest
32 taxable years possible.

33 (j) (1) The amount of the credit otherwise allowed under this
34 section and Section 17053.70, including any credit carryover
35 from prior years, that may reduce the “net tax” for the taxable
36 year shall not exceed the amount of tax ~~which~~ *that* would be
37 imposed on the taxpayer’s business income attributable to ~~the~~
38 ~~enterprise zone~~ *all of those enterprise zones that, in accordance*
39 *with Section 7076.1 of the Government Code, have received an*
40 *audit determination of either “pass” or “superior,” determined*

as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) Attributable income shall be that portion of the taxpayer's California source business income that is apportioned to ~~the enterprise zone~~ *all of those enterprise zones that, in accordance with Section 7076.1 of the Government Code, have received an audit determination of either "pass" or "superior."* For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11. That business income shall be further apportioned to ~~the enterprise zone~~ *those enterprise zones that, in accordance with Section 7076.1 of the Government Code, have received an audit determination of either "pass" or "superior,"* in accordance with Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this section in accordance with paragraph (3).

(3) Business income shall be apportioned to ~~the enterprise zone~~ *those enterprise zones that, in accordance with Section 7076.1 of the Government Code, have received an audit determination of either "pass" or "superior,"* by multiplying the total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two. For purposes of this paragraph:

(A) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in ~~the enterprise zone~~ *those enterprise zones that, in accordance with Section 7076.1 of the Government Code, have received an audit determination of either "pass" or "superior,"* during the taxable year, and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year.

(B) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in ~~the enterprise zone~~ *those enterprise zones that, in accordance with Section 7076.1 of the Government Code, have received an audit determination of either "pass" or "superior,"* during the taxable year for compensation, and the denominator of which is the total

1 compensation paid by the taxpayer in this state during the taxable
2 year.

3 (4) The portion of any credit remaining, if any, after
4 application of this subdivision, shall be carried over to
5 succeeding taxable years, as if it were an amount exceeding the
6 “net tax” for the taxable year, as provided in subdivision (i).

7 (k) The changes made to this section by the act adding this
8 subdivision shall apply to taxable years beginning on or after
9 January 1, 1997.

10 *(l) The changes made to this section by the act that added this*
11 *subdivision apply to taxable years beginning on and after*
12 *January 1, 2005.*

13 SEC. 3. Section 23612.2 of the Revenue and Taxation Code is
14 amended to read:

15 23612.2. (a) ~~There shall be~~ *is* allowed as a credit against the
16 “tax” (as defined by Section 23036) for the taxable year an
17 amount equal to the sales or use tax paid or incurred during the
18 taxable year by the taxpayer in connection with the taxpayer’s
19 purchase of qualified property.

20 (b) For purposes of this section:

21 (1) “Taxpayer” means a corporation engaged in a trade or
22 business within an enterprise zone.

23 (2) “Qualified property” means:

24 (A) Any of the following:

25 (i) Machinery and machinery parts used for fabricating,
26 processing, assembling, and manufacturing.

27 (ii) Machinery and machinery parts used for the production of
28 renewable energy resources.

29 (iii) Machinery and machinery parts used for either of the
30 following:

31 (I) Air pollution control mechanisms.

32 (II) Water pollution control mechanisms.

33 (iv) Data-processing and communications equipment,
34 including, but not limited to, computers, computer-automated
35 drafting systems, copy machines, telephone systems, and faxes.

36 (v) Motion picture manufacturing equipment central to
37 production and postproduction, including, but not limited to,
38 cameras, audio recorders, and digital image and sound processing
39 equipment.

(B) The total cost of qualified property purchased and placed in service in any taxable year that may be taken into account by any taxpayer for purposes of claiming this credit shall not exceed twenty million dollars (\$20,000,000).

(C) The qualified property is used by the taxpayer exclusively in an enterprise zone.

(D) The qualified property is purchased and placed in service before the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(3) "Enterprise zone" means the area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(c) If the taxpayer has purchased property upon which a use tax has been paid or incurred, the credit provided by this section ~~shall be~~ *is* allowed only if qualified property of a comparable quality and price is not timely available for purchase in this state.

(d) In the case where the credit otherwise allowed under this section exceeds the "tax" for the taxable year, that portion of the credit which exceeds the "tax" may be carried over and added to the credit, if any, in the following year, and succeeding years if necessary, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(e) Any taxpayer who elects to be subject to this section ~~shall~~ *may* not be entitled to increase the basis of the qualified property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the taxpayer's purchase of qualified property.

(f) (1) The amount of credit otherwise allowed under this section and Section 23622.7, including any credit carryover from prior years, that may reduce the "tax" for the taxable year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributable to ~~the enterprise zone~~ *all of those enterprise zones that, in accordance with Section 7076.1 of the Government Code, have received an audit determination of either "pass" or "superior," or if applicable, the tax that would be imposed on the combined business income attributable to all of those enterprise zones that, in accordance with Section 7076.1 of the Government Code, have received an audit determination of either "pass" or "superior," of all taxpayers that are members of a unitary group* determined as if that attributable income

1 represented all of the income of the taxpayer *or unitary group*
2 subject to tax under this part.

3 (2) Attributable income shall be that portion of the taxpayer's
4 *or unitary group's* California source business income that is
5 apportioned to—~~the those~~ enterprise—~~zone~~ zones that, in
6 accordance with Section 7076.1 of the Government Code, have
7 received an audit determination of either "pass" or "superior."
8 For that purpose, the taxpayer's *or unitary group's* business
9 income attributable to sources in this state first shall be
10 determined in accordance with Chapter 17 (commencing with
11 Section 25101). That business income shall be further
12 apportioned to—~~the those~~ enterprise—~~zone~~ zones that, in
13 accordance with Section 7076.1 of the Government Code, have
14 received an audit determination of either "pass" or "superior,"
15 in accordance with Article 2 (commencing with Section 25120)
16 of Chapter 17, modified for purposes of this section in
17 accordance with paragraph (3).

18 (3) Business income shall be apportioned to—~~the those~~
19 enterprise—~~zone~~ zones that, in accordance with Section 7076.1 of
20 the Government Code, have received an audit determination of
21 either "pass" or "superior," by multiplying the total California
22 business income of the taxpayer *or unitary group* by a fraction,
23 the numerator of which is the property factor plus the payroll
24 factor, and the denominator of which is two. For purposes of this
25 paragraph:

26 (A) The property factor is a fraction, the numerator of which is
27 the average value of the taxpayer's *or unitary group's* real and
28 tangible personal property owned or rented and used in—~~the those~~
29 enterprise—~~zone~~ zones that, in accordance with Section 7076.1 of
30 the Government Code, have received an audit determination of
31 either "pass" or "superior," during the taxable year, and the
32 denominator of which is the average value of all the taxpayer's
33 *or unitary group's* real and tangible personal property owned or
34 rented and used in this state during the taxable year.

35 (B) The payroll factor is a fraction, the numerator of which is
36 the total amount paid by the taxpayer *or unitary group* in—~~the~~
37 ~~those~~ enterprise—~~zone~~ zones that, in accordance with Section
38 7076.1 of the Government Code, have received an audit
39 determination of either "pass" or "superior," during the taxable
40 year for compensation, and the denominator of which is the total

1 compensation paid by the taxpayer *or unitary group* in this state
2 during the taxable year.

3 (4) The portion of any credit remaining, if any, after
4 application of this subdivision, shall be carried over to
5 succeeding taxable years, as if it were an amount exceeding the
6 “tax” for the taxable year, as provided in subdivision (d).

7 (g) The amendments made to this section by ~~the act adding~~
8 ~~this subdivision~~ *Chapter 323 of the Statutes of 1998* shall apply
9 to taxable years beginning on or after January 1, 1998.

10 (h) *The amendments made to this section by the act adding*
11 *this subdivision shall apply to taxable years beginning on or*
12 *after January 1, 2005.*

13 SEC. 4. Section 23622.7 of the Revenue and Taxation Code is
14 amended to read:

15 23622.7. (a) ~~There shall be~~ *is* allowed a credit against the
16 “tax” (as defined by Section 23036) to a taxpayer who employs a
17 qualified employee in an enterprise zone during the taxable year.
18 The credit ~~shall be~~ *is* equal to the sum of each of the following:

19 (1) Fifty percent of qualified wages in the first year of
20 employment.

21 (2) Forty percent of qualified wages in the second year of
22 employment.

23 (3) Thirty percent of qualified wages in the third year of
24 employment.

25 (4) Twenty percent of qualified wages in the fourth year of
26 employment.

27 (5) Ten percent of qualified wages in the fifth year of
28 employment.

29 (b) For purposes of this section:

30 (1) “Qualified wages” means:

31 (A) (i) Except as provided in clause (ii), that portion of wages
32 paid or incurred by the taxpayer during the taxable year to
33 qualified employees that does not exceed 150 percent of the
34 minimum wage.

35 (ii) For up to 1,350 qualified employees who are employed by
36 the taxpayer in the Long Beach Enterprise Zone in aircraft
37 manufacturing activities described in Codes 3721 to 3728,
38 inclusive, and Code 3812 of the Standard Industrial
39 Classification (SIC) Manual published by the United States
40 Office of Management and Budget, 1987 edition, “qualified

1 wages” means that portion of hourly wages that does not exceed
2 202 percent of the minimum wage.

3 (B) Wages received during the 60-month period beginning
4 with the first day the employee commences employment with the
5 taxpayer. Reemployment in connection with any increase,
6 including a regularly occurring seasonal increase, in the trade or
7 business operations of the taxpayer does not constitute
8 commencement of employment for purposes of this section.

9 (C) Qualified wages do not include any wages paid or incurred
10 by the taxpayer on or after the zone expiration date. However,
11 wages paid or incurred with respect to qualified employees who
12 are employed by the taxpayer within the enterprise zone within
13 the 60-month period prior to the zone expiration date shall
14 continue to qualify for the credit under this section after the zone
15 expiration date, in accordance with all provisions of this section
16 applied as if the enterprise zone designation were still in
17 existence and binding.

18 (2) “Minimum wage” means the wage established by the
19 Industrial Welfare Commission as provided for in Chapter 1
20 (commencing with Section 1171) of Part 4 of Division 2 of the
21 Labor Code.

22 (3) “Zone expiration date” means the date the enterprise zone
23 designation expires, is no longer binding, or becomes
24 inoperative.

25 (4) (A) “Qualified employee” means an individual who meets
26 all of the following requirements:

27 (i) At least 90 percent of whose services for the taxpayer
28 during the taxable year are directly related to the conduct of the
29 taxpayer’s trade or business located in an enterprise zone.

30 (ii) Performs at least 50 percent of his or her services for the
31 taxpayer during the taxable year in an enterprise zone.

32 (iii) Is hired by the taxpayer after the date of original
33 designation of the area in which services were performed as an
34 enterprise zone.

35 (iv) Is any of the following:

36 (I) Immediately preceding the qualified employee’s
37 commencement of employment with the taxpayer, was a person
38 eligible for services under the federal Job Training Partnership
39 Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is
40 receiving, or is eligible to receive, subsidized employment,

1 training, or services funded by the federal Job Training
2 Partnership Act, or its successor.

3 (II) Immediately preceding the qualified employee's
4 commencement of employment with the taxpayer, was a person
5 eligible to be a voluntary or mandatory registrant under the
6 Greater Avenues for Independence Act of 1985 (GAIN) provided
7 for pursuant to Article 3.2 (commencing with Section 11320) of
8 Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions
9 Code, or its successor.

10 (III) Immediately preceding the qualified employee's
11 commencement of employment with the taxpayer, was an
12 economically disadvantaged individual 14 years of age or older.

13 (IV) Immediately preceding the qualified employee's
14 commencement of employment with the taxpayer, was a
15 dislocated worker who meets any of the following:

16 (aa) Has been terminated or laid off or who has received a
17 notice of termination or layoff from employment, is eligible for
18 or has exhausted entitlement to unemployment insurance
19 benefits, and is unlikely to return to his or her previous industry
20 or occupation.

21 (bb) Has been terminated or has received a notice of
22 termination of employment as a result of any permanent closure
23 or any substantial layoff at a plant, facility, or enterprise,
24 including an individual who has not received written notification
25 but whose employer has made a public announcement of the
26 closure or layoff.

27 (cc) Is long-term unemployed and has limited opportunities for
28 employment or reemployment in the same or a similar
29 occupation in the area in which the individual resides, including
30 an individual 55 years of age or older who may have substantial
31 barriers to employment by reason of age.

32 (dd) Was self-employed (including farmers and ranchers) and
33 is unemployed as a result of general economic conditions in the
34 community in which he or she resides or because of natural
35 disasters.

36 (ee) Was a civilian employee of the Department of Defense
37 employed at a military installation being closed or realigned
38 under the Defense Base Closure and Realignment Act of 1990.

1 (ff) Was an active member of the armed forces or National
2 Guard as of September 30, 1990, and was either involuntarily
3 separated or separated pursuant to a special benefits program.

4 (gg) Is a seasonal or migrant worker who experiences chronic
5 seasonal unemployment and underemployment in the agriculture
6 industry, aggravated by continual advancements in technology
7 and mechanization.

8 (hh) Has been terminated or laid off, or has received a notice
9 of termination or layoff, as a consequence of compliance with the
10 Clean Air Act.

11 (V) Immediately preceding the qualified employee's
12 commencement of employment with the taxpayer, was a disabled
13 individual who is eligible for or enrolled in, or has completed a
14 state rehabilitation plan or is a service-connected disabled
15 veteran, veteran of the Vietnam era, or veteran who is recently
16 separated from military service.

17 (VI) Immediately preceding the qualified employee's
18 commencement of employment with the taxpayer, was an
19 ex-offender. An individual ~~shall be~~ is treated as convicted if he or
20 she was placed on probation by a state court without a finding of
21 guilt.

22 (VII) Immediately preceding the qualified employee's
23 commencement of employment with the taxpayer, was a person
24 eligible for or a recipient of any of the following:

25 (aa) Federal Supplemental Security Income benefits.

26 (bb) Aid to Families with Dependent Children.

27 (cc) Food stamps.

28 (dd) State and local general assistance.

29 (VIII) Immediately preceding the qualified employee's
30 commencement of employment with the taxpayer, was a member
31 of a federally recognized Indian tribe, band, or other group of
32 Native American descent.

33 (IX) Immediately preceding the qualified employee's
34 commencement of employment with the taxpayer, was a resident
35 of a targeted employment area (as defined in Section 7072 of the
36 Government Code).

37 (X) An employee who qualified the taxpayer for the enterprise
38 zone hiring credit under former Section 23622 or the program
39 area hiring credit under former Section 23623.

1 (XI) Immediately preceding the qualified employee's
2 commencement of employment with the taxpayer, was a member
3 of a targeted group, as defined in Section 51(d) of the Internal
4 Revenue Code, or its successor.

5 (B) Priority for employment shall be provided to an individual
6 who is enrolled in a qualified program under the federal Job
7 Training Partnership Act or the Greater Avenues for
8 Independence Act of 1985 or who is eligible as a member of a
9 targeted group under the Work Opportunity Tax Credit (Section
10 51 of the Internal Revenue Code), or its successor.

11 (5) "Taxpayer" means a corporation engaged in a trade or
12 business within an enterprise zone designated pursuant to
13 Chapter 12.8 (commencing with Section 7070) of Division 7 of
14 Title 1 of the Government Code.

15 (6) "Seasonal employment" means employment by a taxpayer
16 that has regular and predictable substantial reductions in trade or
17 business operations.

18 (c) The taxpayer shall do both of the following:

19 (1) Obtain from the Employment Development Department, as
20 permitted by federal law, the local county or city Job Training
21 Partnership Act administrative entity, the local county GAIN
22 office or social services agency, or the local government
23 administering the enterprise zone, a certification that provides
24 that a qualified employee meets the eligibility requirements
25 specified in clause (iv) of subparagraph (A) of paragraph (4) of
26 subdivision (b). The Employment Development Department may
27 provide preliminary screening and referral to a certifying agency.
28 The Employment Development Department shall develop a form
29 for this purpose. The Department of Housing and Community
30 Development shall develop regulations governing the issuance of
31 certificates by local governments pursuant to subdivision (a) of
32 Section 7086 of the Government Code.

33 (2) Retain a copy of the certification and provide it upon
34 request to the Franchise Tax Board.

35 (d) (1) For purposes of this section:

36 (A) All employees of all corporations ~~which~~ *that* are members
37 of the same controlled group of corporations shall be treated as
38 employed by a single taxpayer.

39 (B) The credit, if any, allowable by this section to each
40 member shall be determined by reference to its proportionate

1 share of the expense of the qualified wages giving rise to the
2 credit, and shall be allocated in that manner.

3 (C) For purposes of this subdivision, “controlled group of
4 corporations” means “controlled group of corporations” as
5 defined in Section 1563(a) of the Internal Revenue Code, except
6 that:

7 (i) “More than 50 percent” ~~shall be~~ *is* substituted for “at least
8 80 percent” each place it appears in Section 1563(a)(1) of the
9 Internal Revenue Code.

10 (ii) The determination shall be made without regard to
11 subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal
12 Revenue Code.

13 (2) If an employer acquires the major portion of a trade or
14 business of another employer (hereinafter in this paragraph
15 referred to as the “predecessor”) or the major portion of a
16 separate unit of a trade or business of a predecessor, then, for
17 purposes of applying this section (other than subdivision (e)) for
18 any calendar year ending after that acquisition, the employment
19 relationship between a qualified employee and an employer shall
20 not be treated as terminated if the employee continues to be
21 employed in that trade or business.

22 (e) (1) (A) If the employment, other than seasonal
23 employment, of any qualified employee with respect to whom
24 qualified wages are taken into account under subdivision (a) is
25 terminated by the taxpayer at any time during the first 270 days
26 of that employment, whether or not consecutive, or before the
27 close of the 270th calendar day after the day in which that
28 employee completes 90 days of employment with the taxpayer,
29 the tax imposed by this part for the taxable year in which that
30 employment is terminated shall be increased by an amount equal
31 to the credit allowed under subdivision (a) for that taxable year
32 and all prior taxable years attributable to qualified wages paid or
33 incurred with respect to that employee.

34 (B) If the seasonal employment of any qualified employee,
35 with respect to whom qualified wages are taken into account
36 under subdivision (a) is not continued by the taxpayer for a
37 period of 270 days of employment during the 60-month period
38 beginning with the day the qualified employee commences
39 seasonal employment with the taxpayer, the tax imposed by this
40 part, for the taxable year that includes the 60th month following

1 the month in which the qualified employee commences seasonal
2 employment with the taxpayer, shall be increased by an amount
3 equal to the credit allowed under subdivision (a) for that taxable
4 year and all prior taxable years attributable to qualified wages
5 paid or incurred with respect to that qualified employee.

6 (2) (A) Subparagraph (A) of paragraph (1) ~~shall~~ *does* not
7 apply to any of the following:

8 (i) A termination of employment of a qualified employee who
9 voluntarily leaves the employment of the taxpayer.

10 (ii) A termination of employment of a qualified employee
11 who, before the close of the period referred to in subparagraph
12 (A) of paragraph (1), becomes disabled and unable to perform the
13 services of that employment, unless that disability is removed
14 before the close of that period and the taxpayer fails to offer
15 reemployment to that employee.

16 (iii) A termination of employment of a qualified employee, if
17 it is determined that the termination was due to the misconduct
18 (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22
19 of the California Code of Regulations) of that employee.

20 (iv) A termination of employment of a qualified employee due
21 to a substantial reduction in the trade or business operations of
22 the taxpayer.

23 (v) A termination of employment of a qualified employee, if
24 that employee is replaced by other qualified employees so as to
25 create a net increase in both the number of employees and the
26 hours of employment.

27 (B) Subparagraph (B) of paragraph (1) ~~shall~~ *does* not apply to
28 any of the following:

29 (i) A failure to continue the seasonal employment of a
30 qualified employee who voluntarily fails to return to the seasonal
31 employment of the taxpayer.

32 (ii) A failure to continue the seasonal employment of a
33 qualified employee who, before the close of the period referred to
34 in subparagraph (B) of paragraph (1), becomes disabled and
35 unable to perform the services of that seasonal employment,
36 unless that disability is removed before the close of that period
37 and the taxpayer fails to offer seasonal employment to that
38 qualified employee.

39 (iii) A failure to continue the seasonal employment of a
40 qualified employee, if it is determined that the failure to continue

1 the seasonal employment was due to the misconduct (as defined
2 in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the
3 California Code of Regulations) of that qualified employee.

4 (iv) A failure to continue seasonal employment of a qualified
5 employee due to a substantial reduction in the regular seasonal
6 trade or business operations of the taxpayer.

7 (v) A failure to continue the seasonal employment of a
8 qualified employee, if that qualified employee is replaced by
9 other qualified employees so as to create a net increase in both
10 the number of seasonal employees and the hours of seasonal
11 employment.

12 (C) For purposes of paragraph (1), the employment
13 relationship between the taxpayer and a qualified employee shall
14 not be treated as terminated by either of the following:

15 (i) By a transaction to which Section 381(a) of the Internal
16 Revenue Code applies, if the qualified employee continues to be
17 employed by the acquiring corporation.

18 (ii) By reason of a mere change in the form of conducting the
19 trade or business of the taxpayer, if the qualified employee
20 continues to be employed in that trade or business and the
21 taxpayer retains a substantial interest in that trade or business.

22 (3) Any increase in tax under paragraph (1) shall not be treated
23 as tax imposed by this part for purposes of determining the
24 amount of any credit allowable under this part.

25 (f) Rules similar to the rules provided in Section 46(e) and (h)
26 of the Internal Revenue Code shall apply to both of the
27 following:

28 (1) An organization to which Section 593 of the Internal
29 Revenue Code applies.

30 (2) A regulated investment company or a real estate
31 investment trust subject to taxation under this part.

32 (g) For purposes of this section, “enterprise zone” means an
33 area designated as an enterprise zone pursuant to Chapter 12.8
34 (commencing with Section 7070) of Division 7 of Title 1 of the
35 Government Code.

36 (h) The credit allowable under this section shall be reduced by
37 the credit allowed under Sections 23623.5, 23625, and 23646
38 claimed for the same employee. The credit shall also be reduced
39 by the federal credit allowed under Section 51 of the Internal
40 Revenue Code.

1 In addition, any deduction otherwise allowed under this part
2 for the wages or salaries paid or incurred by the taxpayer upon
3 which the credit is based shall be reduced by the amount of the
4 credit, prior to any reduction required by subdivision (i) or (j).

5 (i) In the case where the credit otherwise allowed under this
6 section exceeds the “tax” for the taxable year, that portion of the
7 credit that exceeds the “tax” may be carried over and added to
8 the credit, if any, in succeeding taxable years, until the credit is
9 exhausted. The credit shall be applied first to the earliest taxable
10 years possible.

11 (j) (1) The amount of the credit otherwise allowed under this
12 section and Section 23612.2, including any credit carryover from
13 prior years, that may reduce the “tax” for the taxable year shall
14 not exceed the amount of tax ~~which~~ *that* would be imposed on
15 the taxpayer’s business income attributable to ~~the enterprise zone~~
16 *all of those enterprise zones that, in accordance with Section*
17 *7076.1 of the Government Code, have received an audit*
18 *determination of either “pass” or “superior,” or, if applicable,*
19 *the tax that would be imposed on the combined business income*
20 *attributable to all of those enterprise zones that, in accordance*
21 *with Section 7076.1 of the Government Code, have received an*
22 *audit determination of either “pass” or “superior,” of all*
23 *taxpayers that are members of a unitary group* determined as if
24 that attributable income represented all of the income of the
25 taxpayer *or the unitary group* subject to tax under this part.

26 (2) ~~Attributable income shall be~~ *is* that portion of the
27 taxpayer’s *or the unitary group’s* California source business
28 income that is apportioned to ~~the enterprise zone~~ *all of those*
29 *enterprise zones that, in accordance with Section 7076.1 of the*
30 *Government Code, have received an audit determination of*
31 *either “pass” or “superior.”* For that purpose, the taxpayer’s
32 business attributable to sources in this state first shall be
33 determined in accordance with Chapter 17 (commencing with
34 Section 25101). That business income shall be further
35 ~~apportioned to the enterprise zone~~ *those enterprise zones that, in*
36 *accordance with Section 7076.1 of the Government Code, have*
37 *received an audit determination of either “pass” or “superior,”*
38 in accordance with Article 2 (commencing with Section 25120)
39 of Chapter 17, modified for purposes of this section in
40 accordance with paragraph (3).

(3) Business income shall be apportioned to ~~the enterprise zone~~ *those enterprise zones that, in accordance with Section 7076.1 of the Government Code, have received an audit determination of either "pass" or "superior,"* by multiplying the total California business income of the taxpayer *or the unitary group* by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two. For purposes of this paragraph:

(A) The property factor is a fraction, the numerator of which is the average value of the taxpayer's *or unitary group's* real and tangible personal property owned or rented and used in ~~the enterprise zone~~ *those enterprise zones that, in accordance with Section 7076.1 of the Government Code, have received an audit determination of either "pass" or "superior,"* during the income year, and the denominator of which is the average value of all the taxpayer's *or unitary group's* real and tangible personal property owned or rented and used in this state during the income year.

(B) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer *or unitary group* in ~~the enterprise zone~~ *all of those enterprise zones that, in accordance with Section 7076.1 of the Government Code, have received an audit determination of either "pass" or "superior,"* during the income year for compensation, and the denominator of which is the total compensation paid by the taxpayer *or the unitary group* in this state during the income year.

(4) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "tax" for the taxable year, as provided in subdivision (i).

(k) The changes made to this section by the act adding this subdivision shall apply to taxable years on or after January 1, 1997.

(l) *The changes made to this section by the act that added this subdivision apply to taxable years beginning on and after January 1, 2005.*

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.